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# **In the Supreme Court**

**OF THE**  
**United States**

**OCTOBER TERM, 1972**

**No. 72-6520**

**Supreme Court, U. S.**  
**FILED**

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**KINNEY KINMON LAU, a Minor by and through**  
**MRS. KAM WAI LAU, his Guardian ad Litem, et al.,**  
*Petitioners,*

**VS.**

**ALAN H. NICHOLS, et al.,**  
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals**  
**for the Ninth Circuit**

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**BRIEF OF AMICI CURIAE**  
**MEXICAN AMERICAN LEGAL DEFENSE AND**  
**EDUCATIONAL FUND**  
**AMERICAN G. I. FORUM**  
**LEAGUE OF UNITED LATIN AMERICAN CITIZENS**  
**ASSOCIATION OF MEXICAN AMERICAN EDUCATORS**

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## Subject Index

	Page
Interest of amici .....	1
Summary of the argument .....	3
Argument .....	4

### I

The ethnic group which will be primarily affected by the outcome of this lawsuit is the Spanish-speaking ..	4
---	---

### II

A continued heavy immigration from Mexico combined with a tenacious maintenance of cultural heritage by Mexican Americans have resulted in large numbers of Spanish-speaking school children .....	7
--	---

### III

The lack of instruction in Spanish for Spanish-speaking-children is, in significant part, responsible for the underachievement of Mexican American students ....	12
--	----

### IV

The need for instruction that would permit Spanish-speaking students to benefit from classes taught in the English language has been recognized by governmental agencies throughout the country .....	19
---	----

### V

Granting the relief requested by petitioners is financially and physically feasible .....	22
Conclusion .....	24

## Table of Authorities Cited

Cases	Pages
Arvizu v. Waco Independent School District, United States District Court for the Western District of Texas, C.A. No. W. 71-CA-56 (April 27, 1972) .....	2
Castro v. State, 2 Cal.3d 223 (1970) .....	10
Cisneros v. Corpus Christi I.S.D., 459 F.2d 13 (5th Cir. 1972) .....	9
Graves v. Barnes, 343 F.Supp. 704 (W.D. Tex. 1972), aff'd sub nom. White v. Register, 41 U.S. L. Week 4885 (June 18, 1973) .....	10
Hernandez v. Texas, 347 U.S. 475 (1954) .....	10
Keyes v. Denver School District No. 1, 41 U.S. L. Week 5002 (June 21, 1973) .....	9, 17, 24
Mendez v. Westminster, 161 F.2d 774 (9th Cir. 1948) ....	9, 17
NAACP v. Brennan, U.S. District Court for the District of Columbia, No. 2010-72 (May 31, 1973) .....	10
Roman v. Reynolds Metals Company, ____ F.Supp. ____ (S.D. Tex. 1973) .....	10
San Antonio Independent School District v. Rodriguez, 36 L.Ed.2d 16 (1973) .....	24
Serna v. Portales Municipal Schools, 351 F.Supp. 1279 (D.N.M. 1972) .....	2, 18
Swann v. Charlotte Mecklenberg Board of Education, 402 U.S. 1 (1971) .....	24
United States v. State of Texas, 342 F.Supp. 24 (E.D. Tex. 1971) .....	18

## Constitutions

United States Constitution, Fourteenth Amendment .....	4
--	---

# TABLE OF AUTHORITIES CITED

iii

Statutes	Pages
Alaska Statutes, Sec. 14.08.160 .....	21
Bilingual Education Act, 20 U.S.C., Sec. 880b .....	20, 23
Civil Rights Act of 1964, Title VI .....	4, 6
Colorado Revised Statutes of 1963, Sec. 123.21-3 .....	21
Education Code, Section 5761 .....	20, 21
Elementary and Secondary Education Act, 20 U.S.C., Sec. 241a .....	23
General Statutes of Connecticut, Sec. 10-17 .....	21
Laws of Massachusetts Annotated, Chap. 71A pp. 1-9 .....	21
Maine Statutes Annotated, Title 20, Sec. 102 .....	21
McKinney's Cons. Laws of New York Educ., Sec. 3204 .....	21
Public Law 78 .....	8
Smith Hurd Illinois Statutes Annotated, Chap. 122, Sec. 10-20.8a .....	21
20 U.S.C. Sec. 880b .....	20

## Other Authorities

1 Andersson, Theo. & Bover, Mildred, Bilingual Schooling in the United States, p. 43 (1970) .....	15
Blair, Bertha, Lively, Anna, & Trimble, Glen, Spanish Speaking Americans, National Council of Churches of Christ, p. 113 .....	11, 16
49 Modern Language Journal, Christian, "The Acculturation of the Bilingual Child, pp. 160, 161 (1965) .....	15
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49 Modern Language Journal, Gaarder, Teaching the Bilingual Child: Research, Development and Policy, pp. 165, 168 (1965) .....	15
Free Press, Grebler, Moore & Guzman, The Mexican American People, 1970:	
Page 39 .....	7
Pages 64, 67 .....	8
Page 150 .....	15
Page 425 .....	11
Pages 428, 521 .....	9
35 Fed. Reg. 11595 (July 18, 1970) "Identification of Discrimination and Denial of Services on the Basis of National Origin," May 25, 1970 .....	6
Albuquerque, University of New Mexico, Kibbe, Pauline, Latin Americans in Texas, pp. 82-103 (1946) .....	10
University of Texas, Manuel, H. T., The Education of Mexican and Spanish-Speaking Children in Texas, p. 18 (1930) .....	10, 17
40 Harvard Education Review, Martinez, Literacy Through Democratization of Education, p. 280 (1970) .....	15
Meier & Rivera, The Chicanos: A History of Mexican Americans, p. 135 .....	8
Mexicans in California, Report of Governor C. C. Young's Mexican Fact-finding Committee, 1930 (Reprint San Francisco, California 1970) p. 171 .....	8
Moquin, Wayne, A Documentary History of the Mexican Americans, Praeger Publishers, N.Y., 1971, p. 330 .....	11
National Education Association, The Invisible Minority, Washington, D.C. p. 11 (1966) .....	14
National or Mother Tongue in Beginning Reading: A Comparative Study, Research in the Teaching of English, Vol. II. No. 1, pp. 32-43 (April 1968) .....	19

# TABLE OF AUTHORITIES CITED

v

	Page
United States Commission on Civil Rights, Mexican American Education Study, Report I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest (April 1971) .....	9
United States Commission on Civil Rights, Mexican American Education Study, Report I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest, p. 60 (1971) .....	17
United States Commission on Civil Rights, Mexican American Educational Series Report II: The Unfinished Revolution (1971):	
Page 36 .....	13
Page 100 .....	16
United States Commission on Civil Rights, Mexican American Education Study, Report III, The Excluded Student (1972):	
Pages 14-16 .....	22
Page 22 .....	6
United States Commission on Civil Rights, Mexican American Education Study Series, Report V: Differences in Teacher Interaction with Mexican American and Anglo Students, p. 43 (1972) .....	16
United States Department of Commerce, Bureau of the Census, Persons of Spanish Origin in the United States: March 1972 and 1971, Series P-20, No. 250, April 1973, p. 1 .....	5



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## **INTEREST OF AMICI\***

The Mexican American Legal Defense and Educational Fund (MALDEF) was established on May 1,

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\*The letters of Petitioners and Respondents, consenting to the filing of this brief amici curiae, have been filed with the clerk.

1968, primarily to provide legal assistance to Mexican Americans. It is headquartered in San Francisco with additional offices in San Antonio, Los Angeles, Denver, Albuquerque and Washington, D.C. A major goal of the organization since its inception has been to end educational deprivation to Spanish-speaking children. To this end, MALDEF is representing Spanish-speaking students in *Serna v. Portales Municipal Schools*, 351 F.Supp. 1279 (D.N.M. 1972) and *Arvizu v. Waco Independent School District*, United States District Court for the Western District of Texas, C.A. No. W. 71-CA-56 (April 27, 1972), cases which present issues similar to those presented by Petitioners.

The American G.I. Forum is a social and fraternal organization composed primarily of Mexican Americans. It had its beginnings after World War II in the aspiration of returning Mexican American veterans to end the discriminatory social, economic, and political practices that pervaded this country. The organization now has chapters nationwide. One of the main goals of the Forum is the improvement of education. At the national level, it has strongly supported legislation such as the federal Bilingual Education Act, while locally, the chapters have moved school districts to institute programs to meet the needs of Mexican American children.

The League of United Latin American Citizens (LULAC) is also a social and cultural organization with a nationwide membership. Its history of fighting discrimination against Mexican Americans dates

back to the 1920s when it fought segregation in the Texas schools. High on LULAC's agenda is the goal of ending educational practices which do not reflect the needs of Mexican American students.

The Association of Mexican American Educators was formed in California eight years ago to improve the education offered the Mexican American. The membership is composed of administrators, teachers and community people who subscribe to this goal. Thirty-six chapters are now functioning. The Association has been active throughout California urging the adoption of programs which take account of the language needs of Mexican American children. Additionally, it has been actively encouraging the recruitment of more Mexican Americans for the teaching profession.

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#### **SUMMARY OF THE ARGUMENT**

Amici curiae make the following argument:

There are today millions of Spanish-speaking students in this country, many of whom do not comprehend any English when they come to school. They will be the prime beneficiaries of a result favorable to Petitioners in this case.

The reasons why Spanish has flourished can be traced to the extensive movement of people back and forth across the United States border with Mexico, the forced social and economic isolation of Mexican Americans in this country and a desire by persons of Mexican origin to preserve their abilities in Spanish.

The schools, however, have failed to take account of the needs of Spanish-speaking children. In addition to lagging behind their peers, Spanish-speaking children have suffered psychological damage. The results of this failure are high drop out rates and low achievement.

The relief requested by Petitioners has gained the support of knowledgeable educators and concerned legislators. Spanish-speaking teachers and Spanish language materials are available to satisfy any order favorable to Petitioners. The cost of satisfying such an order is moderate and substantially less than the costs generated by this Court's desegregation decisions.

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## **ARGUMENT**

### **I**

**THE ETHNIC GROUP WHICH WILL BE PRIMARILY AFFECTED BY THE OUTCOME OF THIS LAWSUIT IS THE SPANISH-SPEAKING.**

This suit was brought on behalf of approximately 1,800 non-English-speaking students of Chinese origin in the San Francisco Unified School District who are excluded from receiving the benefits of public school education. Such benefits are denied since the school system does not offer them instruction that allows them to participate in the school program. The issue before the Court is: Does the school district have an obligation under the equal protection clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 to provide non-English-speaking

students with instruction that would enable them to benefit from classes taught in English.

This denial of an equal educational opportunity presently taking place in the Chinese community in San Francisco is but a microcosm of the situation facing Spanish-speaking communities in the United States today. From towns as diverse as Laredo, Texas to New York City, Spanish surnamed children come to school with little or no ability to speak the English language; with a cultural heritage entirely different than that of Anglo Americans.

The population statistics suggest the enormity of the problem. There are over nine million persons of Spanish origin in the United States<sup>1</sup>. "The majority of Spanish origin persons live in households where Spanish is the current language, as 6.0 million of the 9.2 million persons of Spanish origin, or 65 percent, reported Spanish as the language currently spoken in their home . . . Among persons of Spanish origin who were 5 to 19 years old, 64 percent were living in homes where Spanish was the current language."<sup>2</sup>

The two Amici, the American G.I. Forum and the League of United Latin American Citizens, typify the concern of the Spanish-speaking community that non-English-speaking children are suffering and have suffered educational deprivation of profound consequences. As a result of this concern, changes in the

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<sup>1</sup>United States Department of Commerce, Bureau of the Census, *Persons of Spanish Origin in the United States: March 1973 and 1971*, Series P-20, No. 250, April 1973, p. 1.

<sup>2</sup>Ibid., p. 2.

law have been made that allow schools to provide their non-English-speaking students an equal educational opportunity. For example, state laws that prohibited the use of languages other than English in the classroom were repealed. Learning Programs that take account of the language differences were created by state and federal governments.<sup>3</sup> Furthermore, the Department of Health, Education and Welfare has, pursuant to Title VI of the Civil Rights Act of 1964 enacted regulations that could prevent the educational harm suffered by the Chinese children in this case, and Spanish-speaking children throughout the country.<sup>4</sup>

Lack of effective enforcement of these regulations, as well as the voluntary nature of the state and federal programs have stymied broad-ranged progress. There are vast numbers of Spanish-speaking children who remain untouched by the available programs.<sup>5</sup>

Amici believe that the Equal Protection Clause compels school districts to provide instruction that non-English-speaking students understand; however, they will leave the formal legal arguments to the Petitioners and other amici. This brief will develop, for the Court, the reasons why large numbers of school children are Spanish-speaking, the nature of the educational deprivation faced by these children,

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<sup>3</sup>See p. 19 *infra*.

<sup>4</sup>"Identification of Discrimination and Denial of Services on the Basis of National Origin," May 25, 1970, 35 Fed. Reg. 11595 (July 18, 1970).

<sup>5</sup>United States Commission on Civil Rights, *Mexican American Education Study, Report III, The Excluded Student*, 1972, p. 22.



and the ultimate effect on school districts of a decision in the instant case favorable to Petitioners.

## II

**A CONTINUED HEAVY IMMIGRATION FROM MEXICO COMBINED WITH A TENACIOUS MAINTENANCE OF CULTURAL HERITAGE BY MEXICAN AMERICANS HAVE RESULTED IN LARGE NUMBERS OF SPANISH-SPEAKING SCHOOL CHILDREN.**

Mexican Americans, or Chicanos, as this ethnic group is also known, have settled predominately in the Southwest part of the United States. The five states of Texas, California, New Mexico, Arizona and Colorado, because of their proximity to the border, have absorbed most of the immigration from Mexico.<sup>6</sup> More recently, however, Mexican Americans have migrated north to midwestern cities in search of work. The Southwest is no longer necessarily a way station. Immigrants from the interior of Mexico come directly north and consequently, there are many non-English-speaking children in schools in, for example, Chicago, Illinois and Lansing, Michigan.

Migration from Mexico came in three waves. Around the turn of the century, there was a relatively small number of immigrants who came to work in mining, railroad construction and other such laboring work.<sup>7</sup> Immigrants from Asia supplied most of the labor employed in Southwestern agriculture at that time. The

<sup>6</sup>Grebler, Moore & Guzman, *The Mexican American People*, Free Press, 1970, p. 39.

<sup>7</sup>Grebler, *supra* note 6, p. 63.



major wave of Mexicans immigrated to this country during the turmoil of the Mexican revolution. They provided the population base for most present day Mexican American communities around the Southwest.<sup>8</sup> Immigrants were also drawn to the United States by the prosperity of the 1920's. However, they were funneled into farm laboring type of work as the supply of Asian labor diminished.<sup>9</sup> During this period, Mexicans comprised nearly 10% of the legal migration to the United States.<sup>10</sup> The number of illegal immigrants that entered during this prosperous period of American history will never be known. During the depression, immigration decreased drastically. The 1950's once again saw a massive increase of emigration from Mexico to this country. In the second half of the 1950's, nearly 15% of all immigrants came from Mexico.<sup>11</sup> In addition, Congress reinstituted the "bracero" program at the urging of the agricultural interests, causing a great increase in temporary migrations.<sup>12</sup> However, the same conditions which argued for the use of "braceros"—low wages, poor working conditions, inadequate housing—made it attractive for American farmers to hire illegal aliens. As a result, there was also a flood of "wetbacks". The Immigra-

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<sup>8</sup>Meier & Rivera, *The Chicanos: A History of Mexican Americans*, p. 135.

<sup>9</sup>*Mexicans in California*, Report of Governor C. C. Young's Mexican Fact-finding Committee 1930 (Reprint San Francisco, California 1970) p. 171.

<sup>10</sup>Grebler, *supra* note 6, p. 64.

<sup>11</sup>Grebler, *supra* note 6, p. 67.

<sup>12</sup>The bracero program under Public Law 78 allowed contract labor to be brought from Mexico to the United States to do farm work during the appropriate growing and harvesting seasons.

tion and Naturalization Service reported that, in the early 1950's, 3.8 million illegal Mexican aliens were expelled from the United States.<sup>13</sup> The number of illegal aliens who remained in the United States, again, will never be known; nor will the number of citizen-offspring born to the illegal aliens.

If this large mass of people had become integrated into American society as ethnic groups from Europe had, then the Spanish language, in all likelihood, would not have flourished. However, there are many reasons why the Mexican American has remained outside the American "Melting Pot".

First, there is a continuing Mexican cultural infusion because of the above described immigration.<sup>14</sup> Recent immigrants speak only Spanish. They find that they are able to function effectively in Chicano communities without the necessity of learning English. Second, Mexican Americans have suffered the same type of social, economic and political discrimination as the black American. Schools have been segregated, *Keyes v. Denver School District No. 1*, 41 U.S. L. Week 5002 (June 21, 1973), *Cisneros v. Corpus Christi I.S.D.*, 459 F.2d 13 (5th Cir. 1972), *Mendez v. Westminster*, 161 F.2d 774 (9th Cir. 1948), see generally United States Commission on Civil Rights, *Mexican American Education Study, Report I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest*, April 1971. Political rights

<sup>13</sup>Grebler, *supra* note 6, p. 521.

<sup>14</sup>Grebler, *supra* note 6, p. 428.

have been denied, *Graves v. Barnes*, 343 F.Supp. 704 (W.D. Tex. 1972), *aff'd sub nom. White v. Regester*, 41 U.S. L. Week 4885 (June 18, 1973), *Castro v. State*, 2 Cal.3d 223 (1970). Employment discrimination has been the rule, *Roman v. Reynolds Metals Company*, — F.Supp. — (S.D. Tex. 1973), *NAACP v. Brennan*, U.S. District Court for the District of Columbia, No. 2010-72 (May 31, 1973). Social barriers were erected, perhaps epitomized by the separate wash-room facilities described in *Hernandez v. Texas*, 347 U.S. 475 (1954).

This discrimination has created a relatively insulated Mexican American community in large cities such as San Antonio, see *White v. Regester*, *supra*, and Los Angeles.<sup>15</sup> Even in small towns "the barrio"<sup>16</sup> tended to be isolated from the rest of the community.<sup>17</sup> This cultural isolation has fostered retention of the Spanish language. Since children learn Spanish at home and do not socialize with English-speaking children at school, the need and opportunity to speak English is minimal.<sup>18</sup> Third, there is, in the Chicano community, compared to other ethnic groups, a strong

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<sup>15</sup>One author has characterized the Mexican American's position in Los Angeles as follows: "Unassimilated, unwelcome, and unprotected, these people were so thoroughly isolated that the American majority was able to maintain its untainted vision of an integrated community." Fogelson, Robert, *The Fragmented Metropolis: Los Angeles, 1850-1930*, Cambridge, Harvard University Press, 1967.

<sup>16</sup>"Barrio" is a Spanish word denoting a primarily Mexican American area analogous to ghetto.

<sup>17</sup>Manuel, H. T., *The Education of Mexican and Spanish-Speaking Children in Texas*, University of Texas, 1930, p. 18.

<sup>18</sup>Kibbe, Pauline, *Latin Americans in Texas*, Albuquerque, University of New Mexico, 1946, pp. 82-103.

desire to maintain the use of its mother tongue.<sup>19</sup> Chicanos have always lived in the Southwestern United States. Their emigration from Mexico did not require a 3,000 mile journey across an ocean to a foreign place; at most, it was a 200 yard crossing of a river to a place that was once part of Mexico. Examples of the continued desire to hold on to Spanish are the numerous television and radio stations broadcasting in Spanish throughout the country and the importation of Spanish language films.

With this history of constant immigration, discrimination and isolation, the continued use of Spanish is understandable. A study conducted by the Mexican American Study Project at UCLA and later published in Grebler, et al, *The Mexican American People*, p. 425, reported that almost half of the sample of low income Mexican Americans in Los Angeles, and a greater percentage in San Antonio had trouble with English. Even in Minnesota, where there are few Mexican Americans, Spanish is spoken.<sup>20</sup> The census figures cited supra do not show Spanish-surnamed people who have difficulty with the English language, but they do reveal the extent to which all Spanish-surnamed people maintain their knowledge and use of Spanish.

In sum, the continued use of Spanish by Mexican Americans is a reality. The causes are varied, but in

<sup>19</sup>Blair, Bertha, Lively, Anne, & Trimble, Glen, *Spanish Speaking Americans*, National Council of Churches of Christ, p. 113.

<sup>20</sup>Moquin, Wayne, *A Documentary History of the Mexican Americans*, Praeger Publishers, N.Y., 1971, p. 330.

large part they are attributable to the isolation that has been forced on this group by the dominant Anglo society. This isolation has, in part, contributed significantly to this group clinging to its cultural heritage to an extent greater than other ethnic groups. The American school system's failure to cope with this reality has perpetuated it. The results of this failure to cope is described in the following section.

### III

**THE LACK OF INSTRUCTION IN SPANISH FOR SPANISH-SPEAKING-CHILDREN IS, IN SIGNIFICANT PART, RESPONSIBLE FOR THE UNDERACHIEVEMENT OF MEXICAN AMERICAN STUDENTS.**

There are large numbers of Spanish-speaking children who are now sitting mutely in classrooms because they do not understand the language used by the teacher. One knows intuitively that these children will learn nothing until they learn English. However, beyond this common sense understanding of the problem there are cogent educational reasons for teaching English to children in their native language. The first portion of this section will describe what happens to the child who is placed in this type of situation. The second portion will document the educational deprivation that has occurred in significant part as a result of these practices.

The exclusively Spanish-speaking child who comes to school and is taught only in English immediately falls behind his peers. He is unable to benefit from



the instruction offered by the school until he understands a language which is different from the language he has learned in his youngest years. This comprehension may sometimes take several years to develop. In the meantime, he is falling further and further behind. Some schools even add an extra grade to a child's school career because of differences in language. The United States Commission for Civil Rights Report II, *supra*, p. 36 found:

"Grade repetition is also related to the language problem of Mexican American students. In many schools of the Southwest, Mexican American children are frequently required to repeat the first grade until they are judged to have sufficient mastery of the English language to study their subjects in English."

Contrary to the specialized education physically handicapped children are given, which is meant to keep them at parity with other students, Spanish-speaking children lag behind educationally until *they* make the *extra effort* to learn a language—English—very unlike the one with which they are familiar.

Failure to provide Spanish language instruction damages the student not only educationally, but emotionally as well. Language is the dominant culture carrier for the Mexican American. As discussed above, there is a strong retention of this cultural heritage by Mexican Americans. When a child comes to school and finds a complete rejection of the dominant carrier of his culture, his self-esteem suffers. When a lack of formal instruction in Spanish is accompanied by

active discouragement of even the casual use of Spanish in the classroom, the child senses that what he brings to the classroom is valueless. Various commentators have described this problem in the following terms:

"The harm done the Mexican American child linguistically is paralleled—perhaps even exceeded—by the harm done to him as a person. In telling him that he must not speak his native language, we are saying to him by implication that Spanish and the culture which it represents are of no worth. Therefore, (it follows) the people who speak Spanish are of no worth. Therefore, (it follows again) this particular child is of no worth. It should come as no surprise to us, then, that he develops a negative self-concept—an inferiority complex. If he is no good, how can he succeed? And if he can't succeed, why try?"<sup>21</sup>

"The non-English-speaking child who has typically lived the critical first five or six years of his life in a language and a culture different from those he encounters as he enters school inevitably suffers a culture shock. To be sure, most administrators and teachers try their best—in English—to make such a child feel comfortable and welcome. However, to the extent that English is the only medium of communication and the child's language is banned from the classroom and playground, he inevitably feels himself to be a stranger. Only as he succeeds in suppressing his language and natural way of behaving, and in assuming a new and unaccustomed role, does he feel the full warmth of approval. In subtle or

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<sup>21</sup>National Education Association, *The Invisible Minority*, Washington, D.C., 1966, p. 11.



not so subtle ways he is made to think that his language is inferior to English, that he is inferior to the English speaking children in school, and that his parents are inferior to English speakers in the community."<sup>22</sup>

In sum, Spanish-speaking children are subjected to a dual effect; first, the school's failure to meet their language needs, and second, the psychological damage brought about as a result of the school's failure to meet their language needs. No doubt there are children who succeed in school in spite of a history of educational neglect; however, as the following paragraphs document, such neglect has taken its toll of the preponderance of Spanish-speaking children.

What have been the results of these practices? The evidence strikingly demonstrates that the American school system has failed the Mexican American. They are a group that has been excluded from full participation in the schools in almost every respect.

Mexican Americans, twenty-five years and older, in 1960, had a median years of school completed of 7.1 while the rate for Anglos was 12.1 and for nonwhites was 9.0.<sup>23</sup> The dropout problem was so severe in 1942 that one study reported that 43% of the Chicano school age children were not attending school; of these

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<sup>22</sup>Andersson, Theo. & Boyer, Mildred, *Bilingual Schooling in the United States*, Vol. 1, 1970, p. 43. See also Martinez, *Literacy Through Democratization of Education*, 40 *Harvard Education Review*, 1970, p. 280; Gaarder, *Teaching the Bilingual Child: Research, Development and Policy*, 49 *Modern Language Journal* 165, 168 (1965); Christian, *The Acculturation of the Bilingual Child*, 49 *Modern Language Journal* 160, 161 (1965).

<sup>23</sup>Grebler, *supra* note 6, p. 150.

that were, 37,000 were in the second grade and only 6,000 were in the eighth.<sup>24</sup>

Even today in the area of educational achievement Mexican Americans suffer. 64% of eighth grade Mexican American children in the Southwest are reading  $\frac{1}{2}$  year or more below grade level while only 28% of Anglo children are in the same position.<sup>25</sup> In mathematics 57% of Mexican Americans in junior high school in Los Angeles are below or markedly below average. 23% is the equivalent figure for Anglos.<sup>26</sup>

The failure of the schools is epitomized in the differences in attitude and interaction between Mexican Americans and Anglos on the part of teachers. The United States Commission on Civil Rights most recent report in its *Mexican American Education Study Series, Report V: Differences in Teacher Interaction with Mexican American and Anglo Students*, 1972, p. 43, makes the following conclusions:

"The basic finding of this report is that the schools of the Southwest are failing to involve Mexican American children as active participants in the classroom to the same extent as Anglo children. On most of the measures of verbal interaction between teacher and student, there are gross disparities in favor of Anglos.

<sup>24</sup>Blair, *supra* note 19, p. 117.

<sup>25</sup>United States Commission on Civil Rights, *Mexican-American Educational Series Report II: The Unfinished Revolution*, 1971, p. 100.

<sup>26</sup>*Ibid.*, p. 90.

Thus teachers praise or encourage Anglo children 36 percent more often than Mexican Americans. They use or build upon the contributions of Anglo pupils fully 40 percent more frequently than those of Chicano pupils. Combining all types of approving or accepting teacher behavior, the teachers respond positively to Anglos about 40 percent more than they do to Chicano students. Teachers also direct questions to Anglo students 21 percent more often than they direct them to Mexican Americans. In addition, Mexican American pupils receive significantly less overall attention from the teacher, measured by the extent to which teachers address their students in a non-critical way. In light of these findings, it is not surprising to have also found that Mexican American children participate less in class than do Anglos; they speak less frequently both in response to the teacher and on their own initiative. The total picture that emerges from this study of classroom interaction is one in which Mexican American students are ignored compared to their Anglo counterparts."

These dropout rates, achievement disparities and teacher preferences are built upon a base of segregation in student placement. For many years schools were openly segregated.<sup>27</sup> Today, continued isolation characterizes schools in the Southwest.<sup>28</sup>

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<sup>27</sup>Manuel, *supra* note 17, pp. 59, 62 and *Mendez v. Westminster*, *supra*.

<sup>28</sup>United States Commission on Civil Rights, *Mexican American Education Study, Report I: Ethnic Isolation of Mexican Americans in the Public Schools of the Southwest*, 1971, p. 60. *Keyes v. Denver School District No. 1*, 41 U.S. L. Week 5002 (June 21, 1973).

Several courts have considered the effects of failing to give Spanish speaking children some instruction in Spanish. They have determined that the effects are adverse and warrant judicial correction. In *Serna v. Portales Municipal Schools*, 351 F.Supp. 1279, 1282 (D.N.M. 1972), the court accepted the opinion testimony of an educational psychologist who stated that difficulties in the English language accounted for 80% to 85% of the differences in achievement testing results between Chicanos and Anglos. It then held that Spanish-speaking children are entitled to an equal educational opportunity which shall include instruction in their mother tongue. Similarly, the district court stated in *United States v. State of Texas*, 342 F.Supp. 24, (E.D. Tex. 1971) when ordering a comprehensive bilingual and bicultural education plan to remedy a past history of segregation:

"... Mexican American students exhibit numerous characteristics which have a causal connection with their general inability to benefit from an educational program designed primarily to meet the needs of so-called Anglo Americans. These characteristics include 'cultural incompatibilities' and English language deficiencies—two traits which immediately and effectively identify those students sharing them as members of a definite group whose performance norm habitually will fall below that of Anglo-American students who do not exhibit these traits."

Even in the instant litigation the Court of Appeals stated that the sympathy of the lower court for the non-English-speaking Chinese children was well

founded, and that the relief requested by Petitioners was "commendable and socially desirable." 472 F.2d 911, 915 (9th Cir. 1973).<sup>29</sup>

The Chicano has been denied equal educational opportunities in many aspects of his education. Like the Chinese students, he is only asking that at the early stages of his education in this country that he not be forced to fall behind because he does not know English. The results of the policies of the past have failed in this regard. Common sense should have warned us that they would. Common sense also tells us that educational deprivation will continue unless this Court acts.

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#### IV

**THE NEED FOR INSTRUCTION THAT WOULD PERMIT SPANISH-SPEAKING STUDENTS TO BENEFIT FROM CLASSES TAUGHT IN THE ENGLISH LANGUAGE HAS BEEN RECOGNIZED BY GOVERNMENTAL AGENCIES THROUGHOUT THE COUNTRY.**

The Petitioners and Amici in this case have asked for relief which the states and the federal government sanction and encourage. Many of the existing govern-

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<sup>29</sup>Recent research indicates that a child's mother tongue is the best instrument for learning, especially in the early stages of school. It was found that non-national language speaking students taught in schools in which the mother tongue as distinct from the national language were used scored significantly better in reading comprehension of the national language than a similar group taught in the national language. Modiano, *National or Mother Tongue in Beginning Reading: A Comparative Study, Research in the Teaching of English*, Vol. II, No. 1 (April 1968), pp. 32-43. This conclusion is reflected in the educational policy of such bilingual countries as Canada, Finland, Belgium, Switzerland and the Union of South Africa.

ment supported programs, in fact, provide full time bilingual services to both English and non-English-speaking children, relief which is considerably more burdensome to school districts than that requested by Petitioners.

Congress has recognized the needs of non-English-speaking children when it created the Bilingual Education Act of 1967.

"In recognition of the special educational needs of the large numbers of children of limited English-speaking ability in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out new and imaginative elementary and secondary school programs designed to meet these special educational needs. For the purposes of this subchapter, "children of limited English speaking ability" means children who come from environments where the dominant language is other than English."<sup>20</sup>

The states have also become aware of the language problem affecting many school children. Typical of the legislative findings in this regard is the legislative purpose clause of the California Bilingual Education Act, California Education Code §5761:

"The Legislature finds that there are large numbers of children in this state who come from families where the primary language is other than English. To determine more exactly the need in this area, an annual census is necessary. The in-

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<sup>20</sup>20 U.S.C. §880b.



ability to speak, read and comprehend English presents a formidable obstacle to classroom learning and participation which can be removed only by instruction and training in the pupils' dominant language. In many of the public schools an inordinately high percentage of pupils are unable to speak the English language. The Legislature further recognizes that high quality bilingual programs in the public schools would allow the acquisition by students of educational concepts and skills needed to improve the development of human resources in this state. The Legislature finds and declares that a primary goal of such programs is, as effectively and efficiently as possible, to develop in each child fluency in English so that he may then be enrolled in the regular program in which English is the language of instruction."

Each of the following states has a program encouraging at least the relief requested by Petitioners: Alaska Stats. §14.08.160; California Educ. Code §5761; Colorado Revised Stats. 1963 §123.21-3; General Stats. of Connecticut §10-17 et seq.; Smith Hurd Illinois Stats. Ann. Chap. 122 §10-20.8a; Maine Stats. Ann. Title 20 §102; Ann. Laws of Massachusetts Chap. 71A: 1 to 9; McKinney's Cons. Laws of New York Educ. §3204. The Alaska and Massachusetts statutes not only sanction but require that non-English-speaking children be given the kind of instruction they need to understand classes in English.

The responsiveness of these state legislatures to non-English-speaking children is indicative of the seriousness with which responsible legislators and edu-



enters reward their problems. However, this same concern has not permeated through to local school districts generally. 33% of the school systems in the Southwest continue to discourage the use of Spanish in the classroom.<sup>21</sup>

Others have instituted instruction in Spanish only after extensive community pressure. The same patterns and attitudes of prejudice that have resulted in segregation and discrimination against Chicanos in the past prevent the implementation of well recognized programs that would begin to insure equal educational opportunity.

## V

### GRANTING THE RELIEF REQUESTED BY PETITIONERS IS FINANCIALLY AND PHYSICALLY FEASIBLE

Although there are large numbers of non-English-speaking children in this country, the ability to offer them the instruction needed is well within our capabilities. In order to teach a child in a language other than English, the basic ingredient is a teacher who speaks that language. There are now many Chicanos with Spanish speaking ability who are graduating from American universities. If school districts would encourage them to use their knowledge of Spanish in the classroom, many of the problems discussed in this brief would be eliminated. There are also considerable numbers of Anglo teachers, particularly in

<sup>21</sup>U. S. Commission on Civil Rights, Mexican American Education Study, Report III, pp. 14-16.

the Southwest, who know Spanish but are discouraged from using it by school officials. Finally, under the Elementary and Secondary Education Act, 20 U.S.C. §241a, *et seq.*, funds are available for employing teachers aides. At least these non-credentialed personnel could bring Spanish into the classroom.

In addition to Spanish-speaking personnel, Spanish-English educational materials will be needed for bilingual classrooms. Fortunately, many materials have been developed by school districts funded to implement bilingual education programs under the Bilingual Education Act, 20 U.S.C. §880b. This fiscal year the Office of Education of the Department of Health, Education and Welfare has supported 217 bilingual projects with curriculum materials being produced by each. In order to make the products of these grants available to other interested school districts, the Office of Education has created the Bilingual Dissemination Center in Austin, Texas. Because of the work now accomplished, the educational establishment is ready to provide the materials necessary to satisfy a decision by this Court in favor of Petitioners.

There is also no indication that meeting the needs of non-English-speaking children would drain the public fisc. As a matter of common sense, it would cost no more to hire a teacher who speaks Spanish than one who does not. No additional floor space is needed for these children. The federal and state programs do provide monies for bilingual education but in most of these programs extra teachers are added

to faculties and extensive in-service teacher training takes place.

Furthermore, even if additional funds are required to provide the instruction necessary, the burdens are no heavier than those imposed by this Court in desegregation matters. Surely, if this Court could mandate desegregation and its attendant costs in population centers such as Denver, Colorado, *Keyes v. Denver School District No. 1*, 41 U.S. L. Week 5002 (June 21, 1973) and Charlotte, North Carolina, *Swann v. Charlotte Mecklenberg Board of Education*, 402 U.S. 1 (1971), it could require expenditures such as requested in the instant case.

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#### CONCLUSION

This Court in *San Antonio Independent School District v. Rodriguez*, 36 L.Ed.2d 16, 37 (1973) held that the State of Texas was offering enough resources to its school districts for them to provide an adequate education. Even though less money was spent by some districts than others, all were receiving or raising enough to carry on an educational program. For non-English-speaking children within these districts, however, the adequate education standard is not being met. These children are not receiving any education until they learn English. School districts refuse to offer instruction in the native language that will foster a quick and emotionally healthy learning of English. The past failures of the school systems

in this regard are now apparent. They will not be corrected except under mandate from this Court.

Wherefore, Amici pray that this Court grant the relief requested by the Petitioners, reverse the judgment of the Court of Appeals and remand the case to the District Court with instructions that it enter appropriate relief.

Dated, July 27, 1973.

Respectfully submitted,

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